



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-03910

Appearances

For Government: Gregg A. Cervi, Department Counsel

For Applicant: *Pro Se*

October 27, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On January 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on January 26, 2010, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on June 3, 2010, and did not respond with any information within the 30 days permitted. The case was assigned to me on August 16, 2010. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated 16 delinquent debts, exceeding \$47,000 as follows: creditor 1.a (\$98); creditor 1.b (\$200); creditor 1.c (\$355); creditor 1.d (\$78); creditor 1.e (\$726); creditor 1.f (\$427); creditor 1.g (\$734); creditor 1.h (\$884); creditor 1.i (\$938); creditor 1.j (\$38,900); creditor 1.k (\$1,293); creditor 1.l (\$522); creditor 1.m (\$402); creditor 1.n (\$254); creditor 1.o (\$153); and creditor 1.p (\$2,108).

In her response to the SOR, Applicant admitted all of the alleged debts. She claimed she is in the process of making payment arrangements to satisfy some of the creditors (subparagraphs 1.h through 1.k), and is retaining an attorney to address the others.

Findings of Fact

Applicant is a 40-year-old lead fuels technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married in 1990, and has no children from her marriage. (Item 5) She divorced her husband in 1997. Applicant enlisted in the U.S. Air Force in 1988 and served four years of active duty. (Item 5) She currently receives \$356 a month in VA disability compensation. She received a Bachelor of Arts degree in business administration in August 2007 (Item 5).

Following her Air Force discharge in 1992, Applicant worked several jobs. (Item 5) She encountered serious financial problems in early 2008 after she was laid off from her position. Her layoff cost her \$2,000 a month in income. (Items 6 and 7) Her finances improved somewhat during the balance of 2008 after she obtained a position with a local company. (Items 6 and 7)

Between June 2006 and January 2009, Applicant accumulated delinquent debts exceeding \$47,000. (Items 6 through 9) Most of these delinquent debts were accrued following her 2008 layoff, but some were accumulated during periods of underemployment spanning 2006 and 2008. (Items 6 and 7) Applicant has not received any financial counseling and has made no payments on any of her delinquent debts (Items 6 through 9).

In Applicant's personal financial statement, she listed monthly expenses of \$310 (student loans), \$784 (car loan), and \$350 on a personal loan debt. (Item 6) She provided no documentary proof of efforts to negotiate any settlements, reduce payments, or engage any credit counseling agent to assist her in addressing her debts.

Applicant provided no endorsements or documentation of community activities and awards. Nor did she provide any performance evaluations or military service records.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole-person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole-person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

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. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865, that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant accumulated a number of delinquent debts (to include a delinquent student loan debt) during recurrent periods of unemployment and underemployment between 2006 and 2008. Her accumulation of delinquent debts and her past inability and unwillingness to address these debts warrant the application of two of the disqualifying conditions (DC) of the financial guideline: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to her inability to find well-paying work following her discharge from the U.S. Air Force in 1992, and during a difficult stretch for her between 2006 and early 2008. Her largest debt is a student loan deficiency that has not been addressed. Collectively, her remaining delinquent debts exceed \$12,000, and have not been addressed to date.

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve her debts. Partially available to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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." Without more information from Applicant on the steps she has taken to date to resolve her debts, there is insufficient evidence in this record to credit her with responsible corrective measures. Hence, this mitigating condition has only partial application to Applicant's situation.

Moreover, some judgment problems persist, too, over Applicant's unexplained delinquencies and her failure to demonstrate she acted responsibly in addressing her listed debts once the unemployment and underemployment conditions that contributed to the delinquencies had passed or eased, and her finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are her listed debt delinquencies ongoing, but she has failed to address them in any tangible way. Mitigation credit is not available to Applicant based on the evidence developed in this record.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. Since her return to work following her 2008 layoff, she has not shown any manifest effort in addressing any of her covered debts to mitigate her still delinquent accounts. Resolution of her delinquent accounts is a critical prerequisite to her regaining control of her finances.

While unemployment and underemployment conditions might have played a considerable role in her accumulation of so many debts over a relatively short period, Applicant failed to provide any explanatory material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgment and trust levels sufficient to overcome security concerns arising out of her accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, her lack of any probative explanations for her debt

accruals, and her failure to provide any proof of corrective actions taken to address her old debts, it is still too soon to make safe predictive judgments about Applicant's ability to repay her debts and restore her finances to stable levels commensurate with the minimum requirements for holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.p.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in paragraph 2(a) of the AGs.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a through 1.p:

Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

