



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-04381
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

April 16, 2010

Decision

HOWE, Philip S., Administrative Judge:

On January 29, 2009, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On November 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under 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 the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on December 29, 2009. Applicant requested her case be decided on the written record in lieu of a hearing.

On January 26, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on the same day. She was given the opportunity to file objections and submit

material in refutation, extenuation, or mitigation. Applicant received the file on February 8, 2010. Applicant filed a Response to the FORM on March 8, 2010, within the 30 day time allowed that would have expired on March 10, 2010. The Department Counsel had no objection to her Response. I received the case assignment on March 24, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.a to 1.g, 1.i, 1.k, 1.l, 1.o to 1.s, 1.u, 1.v, 1.aa, and 1.ab, and admitted all other allegations. (Items 2-4, 8)

Applicant is 39 years old, divorced with two children, and works for a defense contractor. She married in 1991 and divorced in 2002, according to her e-QIP. Her Response stated she married at age 19 (in 1991) and divorced two years later, which would be 1993. Applicant does not explain this discrepancy in dates, but it casts doubt on the validity of her other statements. (Item 1; Response)

Applicant has had three major illnesses in the past 12 years. From 1998 to 2000 she had cancer and treatments, in 2006 she had surgery to repair an injury, and since 2007 she has undergone treatment for a kidney ailment. As part of her kidney treatment, Applicant asserts her physicians removed "every abdominal organ through the incision in her side and cleaned and returned" them, followed by a two-month recovery period. Her delinquent medical debts originated with these treatments, according to Applicant. During these periods of time, she was unemployed for some periods of time, but Applicant did not provide specific dates and periods. Her income during her employment ranged, according to her, from \$19,000 to \$30,000. (Response)

Applicant has 28 delinquent debts totaling \$23,520. Applicant admits to owing 9 delinquent debts totaling \$10,487. The 28 delinquent debts consist of 15 non-medical debts totaling \$5,007 (subparagraphs 1.a, 1.b, 1.e, 1.g, 1.i, 1.l, 1.o. to 1.q, 1.s to 1.v, 1.aa, and 1.ab); 9 medical debts totaling \$8,508 (subparagraphs 1.c, 1.d, 1.f, 1.h, 1.k, 1.m, 1.n, and 1.r); and 4 student loans totaling \$10,005 (subparagraphs 1.w to 1.z). Applicant has 9 delinquent debts under \$100 each totaling \$569. She has not repaid or resolved any of these debts. (Items 2, 5-8)

The Government's Item 5 is a credit report dated March 4, 2009, showing Applicant has 23 delinquent debts totaling \$15,311. The Government's Item 6 is a June 9, 2009, credit report showing Applicant has 26 delinquent debts totaling \$22,206. The final Government exhibit, Item 7, being a credit report dated October 22, 2009, shows Applicant with 20 delinquent debts totaling \$11,095. 24 debts appear on at least two of these credit reports. The credit reports show the earliest delinquencies were reported in October 2002, on the student loans. Applicant's debts show a pattern of accumulating debt and not exerting any effort to repay it. (Items 5-8)

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, the administrative judge applies the guidelines 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.

According to Directive ¶ E3.1.14, the Government must 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 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 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 guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and,
- (c) a history of not meeting financial obligations.

From 2002 to the present, Applicant accumulated 28 delinquent debts, totaling \$23,520, which remain unpaid or unresolved. Both of these disqualifying conditions pertain to Applicant's pattern of debt accumulation.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability:

- (b) 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.

AG ¶ 20(b) would apply if the loss of employment or unexpected medical emergency were shown by Applicant to have a substantial effect on her ability to repay her debts. In the past eight years, Applicant has been unemployed for an undetermined amount of time. Her Response does not state specifically the periods of unemployment. Applicant does not connect her unemployment to her illnesses and then to her delinquent medical debts with any precision. Further, she did not show how her three physical ailments since 1998 adversely affected her ability to pay her debts on time. Applicant did not show specifically what medical insurance she has, or had, at specific times since 1998 to pay her medical bills, and what part of her medical debts are her obligation as her co-payments.

Applicant has not attempted to repay the \$569 she owes on nine delinquent debts, under \$100 each. She failed to meet her burden of proof on that issue. Applicant failed to prove AG ¶ 20(b) applied because she did not submit sufficient evidence of the conditions that she asserted were beyond her control and that she acted responsibly in resolving her delinquent debts during the time the debts were accumulating.

I considered all the remaining mitigating conditions in AG ¶ 20 as they might apply to Applicant. The delinquent debts listed in the SOR are recent and frequent. She did not present any evidence she sought or obtained financial counseling to help her solve her debt problem. Applicant did not present a detailed repayment plan for her delinquent debts in her Answer or her Response. Nor did she present any evidence that she had a legitimate basis to contest any debt. There is no affluence at issue. For these reasons I concluded none of the mitigating conditions apply to Applicant.

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):

(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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken any action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Her inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on any of her delinquent debts during the past eight years.

