



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



In the matter of:)
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-----) ISCR Case: 09-04601
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)
Applicant for Security Clearance)

Appearances

For Government: Greg C. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

HOWE, Philip S., Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On February 26 2009, Applicant submitted an Electronic Questionnaire for National Security Positions (SF 86). On August 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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.

Applicant answered the SOR on September 14, 2010, and requested that the case be decided on the written record in lieu of a hearing. On November 9, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing 15 Items

and mailed Applicant a complete copy on November 17, 2010. Applicant received the FORM on November 22, 2010, and had 30 days from its receipt to file objections and submit additional information. She did not submit any additional documentation. On January 11, 2010, DOHA assigned the case to me.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. She has three children. Applicant is married to her third husband. She and her first husband were married and divorced twice. (Items 5 and 15)

Based on credit bureau reports from March, August, and October 2009, and February 2010, the SOR alleged 54 debts totaling \$49,037. Applicant admitted that she owed the debts alleged in ¶¶ 1, except the debts listed in Paragraphs 1.c, 1.aa, 1.bb, 1.ff, and 1.jj to 1.mm.¹ Those debts total \$6,708. Applicant's debts began accruing in 2005. Applicant's debts consist of medical bills, credit cards, a repossessed car balance owed, a utility expense, and miscellaneous creditors. Seventeen of the medical debts may be included in the \$50 and \$100 monthly garnishment payments she is making after the debts were reduced to judgments, but she did not identify those SOR debts in her payment schedules. They may be the debts in Subparagraphs 1.k, 1.l, 1.n, and 1.aa to 1.qq, totaling \$12,822. She provided bank automatic deduction statements to corroborate her assertions. These documents showed Applicant paid a total of \$2,800 from March 2009 to August 2010 when she submitted her SOR Answer to DOHA. She did not provide any evidence to contradict the information contained in the CBRs. Applicant included in her Answer and the interrogatory responses copies of letters from August 2009 she wrote to creditors, making handwritten notations on them later that she had no response from some and would pay others later because she could not afford payments now. Applicant's SOR shows 39 debts that are under \$500 each. Those debts total \$8,429. She told the government investigator in May 2009 that she could not afford to pay more than \$200 monthly on her debts. She is paying child support to her first husband for their two children, who are now 14 and 17 years old. Payments are made by garnishment. (Items 4 to 11, 15)

Applicant attributed her financial problems to low paying positions, not having health insurance until she married her current husband, and her second husband taking money from her while he could not find or maintain steady employment. She did not submit any evidence regarding her salary since 2005 or her budget. (Items 4-7.)

In May 2009, Applicant met with a government investigator to discuss her delinquent accounts. During that interview, she acknowledged her various delinquent debts and expressed her intention to pay or resolve them. She stated she did not presently have the money to do so. (Items 6, 7)

¹ Subparagraphs 1.xx and 1.yy are not listed in the SOR. There are only 54 delinquent debts listed in the SOR.

Applicant did not submit any documentation that she has participated in credit counseling or budget education. 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.

Applicant admitted all the allegations in Paragraph 2 of the SOR regarding personal conduct in the workplace. The first incident occurred in September 1997 when a resort and casino employer terminated her employment with them after management received a complaint from a customer. The second incident occurred in March 1998 when her employer found her sleeping on the job at her guard post. She received a written reprimand. The same employer terminated Applicant in August 1998 after she missed many work days. Applicant was arrested in October 2001 on charges of child endangerment and domestic battery when she and her second husband became embroiled in a physical argument and their 2-year-old son was bumped into a wall while being held by his father. Applicant completed 26 weeks of anger management and the charges were dismissed in the state court in March 2005. Applicant also had two incidents with her current employer. The first occurred in July 2004 when she claimed she needed allergy medicine before going outside the building and pulling weeds. Her supervisor ordered her to work first, but Applicant got the medicine first and then worked. The supervisor suspended her for two days for insubordination. She was also disciplined in September 2004 for poor attendance. (Items 5, 6, 13-15)

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 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.

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Based on three CBRs and her admissions, Applicant has been unable or unwilling to satisfy delinquent debts that began accruing in 2005 and remain unpaid at present. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 sets forth conditions that could mitigate financial security concerns:

(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 current reliability, trustworthiness, or good judgment;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Because Applicant's financial delinquencies have been ongoing since 2005, remain unresolved, and are not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. She did not present credible evidence to corroborate her assertions that the accumulation of the debt was due to conditions beyond her control or that she attempted to responsibly manage that debt once it accrued, as required under AG ¶ 20(b).

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). She did not submit evidence that she received credit counseling. She is paying two collection agencies for various medical debts, which might indicate that the situation is coming under control except the debts total about \$10,000. It will take Applicant eight years or longer to pay just those debts. With her current husband's medical insurance she should not be incurring further substantial medical debts. However, one debt owed to a hospital is \$18,014 (SOR Para. 1. aaa) which will take another 10 years for Applicant to pay at \$200 monthly. She does not have an agreement with that hospital according to the documents she submitted with her Answer. Nor did she present evidence that she

made a good-faith effort to pay or resolve any of the 54 debts because all payments are being made pursuant to a garnishment order. Applicant did not provide documentation verifying that she formally disputed or investigated any debt, which evidence is necessary to trigger the application of AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(f).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single

guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and,

(g) association with persons involved in criminal activity.

AG ¶ 16 (d) and (e) disqualifying conditions are applicable. Applicant has a history of employee misconduct and criminal domestic actions from 1997 to 2004. This information is not explicitly covered under any other guideline, but it supports a "whole-person" assessment of questionable judgment, untrustworthiness, unreliability, lack of

candor, unwillingness to comply with rules, or other characteristics indicating a person may not properly safeguard protected information.

Applicant was asleep at her guard post in March 1998 and received a suspension for that unreliability. She has been disciplined twice by two different employers for poor attendance, in 1998 and 2004. She did not comply with her supervisor's instructions in 2004 about yard maintenance. Applicant was suspended for that unwillingness to comply with supervisory instructions. She exercised poor judgment when she became involved with her second husband in a domestic battery situation while he was holding their 2-year-old child. AG ¶ 16 (d) applies.

All of this misconduct creates a vulnerability to exploitation, manipulation, duress that may affect Applicant's personal and community standing. The domestic battery incident is of particular concern because of the anger displayed and the physical actions taken by Applicant against her husband and child. AG ¶ 16 (e) applies.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is 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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of these mitigating conditions apply because Applicant did not submit any evidence that any of them could be applicable.

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, a parent of three children, who has worked for a federal contractor since 2004. In August 2010, she learned of the Government's concerns and placed on notice that her delinquent debts were creating security concerns and potentially affecting her employment. Despite that knowledge, she did not provide proof that she has taken any pro-active steps to address the delinquent debts, instead waiting to be sued and have her wages garnished by two creditors. Furthermore, Applicant failed to demonstrate financial rehabilitation, which is required to assure the Government that the recurrence or continuance of these unaddressed obligations is unlikely. The record contains insufficient other evidence about her character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Applicant's financial predicament is coupled with her personal conduct in the workplace and the home she shared in 2001 with her second husband. Her conduct in these six incidents show a lack of trustworthiness, unreliability, a failure to follow rules, and failure to comply with directions from her supervisors. She engaged in these actions

voluntarily while an adult. She did not demonstrate any rehabilitation that would diminish the likelihood that they could occur in the future.

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 and personal conduct. I conclude the "whole-person" concept against Applicant.

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.j, 1.m, 1o to 1.z:	Against Applicant
Subparagraphs 1.k, 1.l, 1.n, 1.aa to 1.qq:	For Applicant
Subparagraphs 1.rr to 1.ww:	Against Applicant
Subparagraphs 1.zz to 1.ddd:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2. a through 2.f:	Against Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge