



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



In the matter of:)
)
) ISCR Case No. 09-05005
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

January 5, 2011

Decision

DAM, Shari, Administrative Judge:

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

On March 23, 2009, Applicant submitted a Questionnaire for Sensitive Positions (SF 86). On May 7, 2010, 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.

Applicant answered the SOR on May 25, 2010 and requested that the case be decided on the written record in lieu of a hearing. On September 30, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items and mailed

Applicant a complete copy on October 1, 2010. Applicant received the FORM on October 8, 2010, and had 30 days from its receipt to file objections and submit additional information. She timely submitted additional documentation to which the Department had no objection. I marked those documents as Applicant Exhibits (AE) A through K, and admitted them into evidence. On November 15, 2010, DOHA assigned the case to me.

Findings of Fact

Applicant's SOR response admitted the allegations contained in SOR ¶¶ 1.c, 1.e, 1.f, 1.g, 1.h, 1.l, 1.m, 1.q, 1.r, and 1.u. Those delinquent debts total \$23,073. She denied that she owed the debts listed in SOR ¶¶ 1.a, 1.b, 1.d, 1.i, 1.j, 1.k, 1.n, 1.o, 1.p, 1.s, 1.t, 1.v, 1.w, and 1.x, because she was not aware of those debts. Those debts total \$5,047. Her admissions are incorporated as factual findings.

Applicant is 49 years old and divorced since 2002. She was married for 20 years. She has two adult children. In April 2008, she began a position as security guard for a defense contractor. Prior to this job, she worked as a waitress or hostess since 2001, with short periods of unemployment. She was unemployed from April 2004 to August 2005, while recovering from an automobile accident. (Item 5.)

On April 15, 2009, Applicant met a government investigator to discuss past due financial accounts. During that interview, she attributed her financial problems to the 16-month-period of unemployment, a lack of steady gainful employment, and her previous boyfriend who incurred the \$6,691 and \$1,820 debts listed in SOR ¶¶ 1.l and 1.u after using her credit cards. (Item 6 at 13.) She told the investigator that she had no plans to contact the creditors unless she was legally confronted by them because she did not have sufficient money to make the minimum payments they demanded. However, she did not intend to incur future financial delinquencies. (*Id.*) She earns \$19,000 annually in her position. (AE A.) In September 2009, she submitted a budget. Her monthly net income is \$1,161 and expenses are \$1,027, leaving about \$100 at the end of each month for other items or small payments on the debts. (Item 7 at 5.)

Based on credit bureau reports (CBR) dated April 2009 and March 2010, the SOR alleged 24 delinquent debts totaling \$28,120 and involving unpaid medical bills, credit cards, and consumer purchase accounts. The delinquent debts accrued between 2003 and March 2009. In September 2009, she settled the \$1,820 debt listed in SOR ¶ 1.u. (AE I, J.) In July 2010, she paid the \$356 debt listed in SOR ¶ 1.r. (AE D.) In September and October 2010, she made monthly payments of \$40 on the \$524 debt listed in SOR ¶ 1.q. (AE H, G.) Those three debts total \$2,700. The remaining 21 debts totaling \$25,420 remain unresolved because she does not earn enough money to pay or resolve all of them at one time. (AE A.) She has not obtained financial counseling or formally disputed any of the 14 debts that she denied owing.

Applicant's supervisor submitted a letter of recommendation on Applicant's behalf. He considers her to be a "dependable, reliable and honest employee. She is

considered a valuable asset to our company.” (AE C.) He is aware of her financial problems and has confidence that she will continue resolving them in a timely manner. (*Id.*)

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 two CBRs and her statements, Applicant has a history of being unable to satisfy delinquent debts that accrued between 2003 and 2009. 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 set 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.

Applicant's delinquencies arose between 2003 and 2009, most of which remain unresolved. Because the problems are ongoing and 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 presented evidence that the accumulation of debt resulted after she was injured in a car wreck and subsequently was unemployed for about 16 months, and her previous boyfriend misused her credit card. Those were conditions beyond her control. Because she did not submit any evidence of steps that she took to responsibly manage those debts while they were accruing, AG ¶ 20(b) has limited application.

Applicant did not provide evidence that she established a long-term plan to resolve her debts or that she sought credit counseling to assist in their resolution. According to her budget, she has little money at the end of the month to make significant payments on the unpaid debts. At this time, her financial problems are not under control. Hence, AG ¶ 20(c) cannot apply.

Applicant provided evidence that she made a good-faith effort to address three of the SOR debts. She submitted proof that she paid two debts and is making monthly payments on another debt. She paid one of the debts before the SOR issued. AG ¶ 20(d) had some application.

Although Applicant consistently denied owing 14 debts, she did not provide documentation verifying that she formally disputed the debts through the credit reporting agencies, which is necessary to trigger the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

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 since April 2008. Her e-QIP does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts. Her financial problems are attributable to low paying jobs, a long period of unemployment, and a previous boyfriend who abused her credit cards. In April 2009, she learned of the Government's security concerns relating to her numerous delinquent debts. At that time, she denied many of the debts and stated that she did not have any intention to resolve them, unless legally required to do so. In her May 2010 response to the SOR, she continued to deny 14 of the 24 debts because she remained unaware of them, despite having knowledge of them since April 2009 and an opportunity to investigate or dispute them. However, from September 2009 to the present, she managed to resolve \$2,700 of the delinquent debt, which is noteworthy given her limited income. She provided some evidence concerning the quality of her job performance and trustworthiness. However, I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing. If she continues to make some progress in resolving the delinquent debts, she may be a good candidate for eligibility of a security clearance 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.

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.p:	Against Applicant
Subparagraphs 1.q and 1.r:	For Applicant
Subparagraphs 1.s and 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v through 1.x:	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.

SHARI DAM
Administrative Judge