



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



In the matter of:)
)
) ISCR Case: 09-07677
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

March 29, 2011

Decision

DAM, Shari, Administrative Judge:

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

On July 10, 2009, Applicant submitted an Electronic Questionnaire for National Security Positions (e-QIP). On August 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken pursuant to 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 13, 2010, and requested the case be decided on the written record in lieu of a hearing. On December 13, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing ten Items and mailed

Applicant a complete copy on December 15, 2010. Applicant received the FORM on December 22, 2010, and had 30 days from its receipt to file objections to the FORM and submit additional information. She did not submit any additional documentation. On February 08, 2011, DOHA assigned the case to me.

Findings of Fact

In her response, Applicant admitted the allegations contained in Paragraphs 1.f, 1.g, 1.h, 1.j, 1.k, 1.o, 1.p, 1.q, 1.r, 1.s, and 1.u of the SOR. She denied all other allegations contained in Paragraph 1 and those contained in Paragraph 2. Her admissions are accepted as factual findings.

Applicant is 45 years old and divorced since 1991. She has a 24-year-old child. From October 2000 to January 2008, she was employed with private companies. She was then unemployed until June 2009, when she obtained a position with a defense contractor. According to her Answer, she began accumulating debt from 1998 to 2002 when she accepted numerous offers from credit card companies. (Item 4.) She subsequently was unable to maintain payments on the accounts because of unforeseen medical expenses, a lack of child support, and the year and a half of unemployment. (*Id.*)

Applicant answered “no” in response to “Section 26. Financial Record For the following, answer for the last 7 years, unless otherwise specified in the question. Disclose all financial obligations, including those for which you are a cosigner or guarantor: f) Have you defaulted on any type of loan?; g) Have you had bills or debts turned over to a collection agency?; h) Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?; m) Have you been over 180 delinquent on any debt(s), and n) Are you currently over 90 days delinquent on any debt(s)?” She did not list any delinquent debts.

In July 2009, Applicant met with a government investigator to discuss her delinquent accounts. During that interview, the investigator reviewed a credit bureau report (CBR) that disclosed some accounts were opened between 2001 and 2008. Applicant agreed to contact her creditors to begin resolving the debts. (Item 6 at 78.) In response to the investigator’s inquiry regarding her failure to disclose the delinquent accounts on her e-QIP, she indicated that she stopped paying accounts in 2001 or 2002, more than seven years ago, and that her ongoing debts were current. (Item 6 at 78.) In April 2010, she reviewed the summary of her July 2009 interview and attested to its veracity. In her Answer to the SOR, she stated that she “believed any adverse information had been removed.” (Item 4.)

Based on CBRs dated July 2009, October 2009, February 2010, and May 2010, the SOR alleged 21 delinquent debts totaling \$36,181 that began accruing in 2001. Applicant did not provide documentation that any of the debts are paid or resolved, other than her student loan, on which she makes monthly payments of \$130. (SOR ¶ 1.t.) She did not submit any evidence that she has participated in credit counseling or

budget education. She provided no information concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

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 four CBRs and her admissions, Applicant has been unable or unwilling to satisfy delinquent debts that began accruing in 2001 and remain unresolved at present. The evidence is sufficient to raise these two 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 considerations 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 financial delinquencies began accruing in 2001 and remain unpaid or 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 did not present sufficient evidence that the accumulation of \$36,181 of delinquent debt was due to conditions beyond her control or that she attempted to responsibly manage the debts once they accrued, as required under AG ¶ 20(b). In fact, she acknowledged that between 1998 and 2002, she accepted many credit card offers, leading to the accumulation of debt.

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). She did not submit evidence that she received financial counseling or that she paid or resolved any of the 21 debts, other than one, which would indicate that the situation is under control. Nor, did she present evidence that she made a good-faith effort to pay or resolve them, except her student loan. Despite a statement in July 2009 that she would begin addressing the delinquent debts, Applicant did not provide documentation that she did so. There is no evidence in the record verifying that she formally disputed or investigated any of the SOR-listed debts, which is necessary to trigger the application of AG ¶ 20(e). 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.

AG ¶ 16 describes a condition 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.

Applicant asserted that she did not disclose her delinquent debts because she essentially thought they were outside the 7-year time frame listed in Section 29 of the July 2009 e-QIP and thought that the debts had been removed from her credit bureau reports. Without additional evidence, her explanation is not credible. The evidence is sufficient to raise said disqualifying condition.

AG ¶ 17 includes four conditions that could mitigate security concerns arising under this guideline:

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

(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; and

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

AG ¶ 17(a) does not apply because Applicant did not make any effort to correct the omissions before being confronted about them. AG ¶ 17(c) does not apply because the failure to disclose information occurred in July 2009, which is sufficiently recent and casts doubt on her current good judgment, trustworthiness, and reliability. Applicant did not provide any evidence to trigger the application of AG ¶ 17 (d) or AG ¶ 17(e).

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 June 2009. In July 2009, she learned of the Government's concerns relating to her financial delinquencies, and indicated a willingness to resolve the matters. She also was notified of the personal conduct concerns regarding her failure to disclose the financial adverse information. In August 2010, DOHA filed a SOR, and in December 2010, the Government filed the FORM. For more than a year, Applicant has known 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 sufficient steps to address 20 delinquent debts, including paying the smaller debts listed in SOR ¶ 1.a for \$18, SOR ¶ 1.b for \$12, or other debts less than \$100. Applicant failed to demonstrate financial rehabilitation, which would indicate that the continuance of these unaddressed obligations is unlikely. The record contains insufficient evidence about her character, trustworthiness, or reliability, which could potentially mitigate the personal conduct concerns or make their recurrence less likely.

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.

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.s:	Against Applicant
Subparagraph 1.t.:	For Applicant
Subparagraph 1.u:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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