



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



In the matter of:)	
)	
-----)	ISCR Case: 10-01937
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

August 31, 2011

Decision

HOWE, Philip S., Administrative Judge:

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

On November 5, 2009, Applicant submitted an Electronic Questionnaire for National Security Positions (e-QIP). On March 16, 2011, 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 3, 2011, and requested that the case be decided on the written record in lieu of a hearing. On May 27, 2011, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items and mailed

Applicant a complete copy on June 2, 2011. Applicant received the FORM on June 14, 2011, and had 30 days from its receipt to file objections and submit additional information. She did not submit any additional documentation on or before July 14, 2011. On August 3, 2011, DOHA assigned the case to me.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She is not married. Applicant lives with her relatives. She started her current position in June 2009. (Items 4 and 5)

Based on credit bureau reports (CBR) from November 20, 2009; February 28, 2011; and May 20, 2011, the SOR alleged nine delinquent debts totaling \$35,200.00. All debts are owed to banks or collectors on behalf of stores. All debts appear to have originated as credit card debts. Applicant admitted that she owed all of the debts alleged in the SOR. (Items 3 to 9)

Applicant's interview with a government investigator in December 2009 confirmed that she was not paying her delinquent debts, which dated from 2003. She did not submit any documentary evidence to prove she paid any money on these debts. In 2003 and 2004 Applicant used credit cards to pay rent, purchase food, and other acquisitions. She then used the income from her part-time jobs to pay monthly expenses and attend college part-time. Her financial statement of December 10, 2010, attached to her interrogatories, showed her net monthly income as \$1,714 and expenses as \$1,674, leaving a net remainder of \$40. Applicant also did not provide any payment history or the current balances of each debt at the time of her answer. It cannot be determined based on the evidence if any of them have been paid or resolved. She did not submit any evidence to contradict the information contained in the CBRs. (Items 1, 3, 5-9)

Applicant did not submit any documentation that she 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.

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 2003 and 2004 and remain unpaid at the present. Applicant admitted she charged purchases on her credit cards during 2003 and 2004 totaling \$35,200, but never repaid the debts. She ignored the debts because she did not have full-time jobs and used any income from her part-time jobs to support herself. 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 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.

Because Applicant's financial delinquencies have been ongoing since 2004, 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.

Applicant did not present credible evidence 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). This mitigating condition does not apply.

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). She did not submit evidence that she received credit counseling or that she paid or resolved any debt, which would indicate that the situation is coming under control. Nor, did she present evidence that she made a good-faith effort to pay or resolve any of the nine debts. Therefore, these two mitigating conditions do not apply.

Applicant did not provide documentation verifying that she formally disputed or investigated any debt. Evidence of those efforts is necessary to trigger the application of AG ¶ 20(e). This mitigating condition does not apply.

There is no evidence to support the application of AG ¶ 20(f) concerning affluence resulting from a legal source.

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 federal contractor since 2009. In December 2009, when interviewed by

the government investigator, she learned of the Government's concerns relating to her financial delinquencies. In June 2011, the Government filed the FORM. For almost a year, she has been 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 had taken any steps to address the delinquent debts. 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 evidence about her character, trustworthiness, or responsibility to mitigate these concerns or make their continuation 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. 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.i: 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