



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-02993
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

January 4, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On August 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 on September 25, 2010, and requested a hearing before an administrative judge. The case was assigned to me on November 3, 2010. DOHA issued a Notice of Hearing on November 9, 2010. I convened the hearing as scheduled on December 7, 2010. The Government offered Exhibits (GE) 1 through 7. Applicant did not object and they were admitted. Applicant testified on her own behalf

and offered Exhibits (AE) A through C, which were admitted without objections. DOHA received the hearing transcript (Tr.) on December 14, 2010.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old and has worked for a federal contractor since March 2009. She was married in 1984 and divorced in 1992. Applicant graduated from college in 1993 and earned a bachelor's degree. She and her current husband have been together since 1991 and married in 1998. They have two daughters ages 17 and 12 years old. They have been separated since July 2009, and she filed for divorce in November 2010. The divorce is pending.¹

Applicant worked outside the home for one year after she graduated from college. From 1994 to March 2009, she did not work outside the home. Her husband had his own business, and she would help him and work about 15-30 hours a week. She was not paid. In 2002, he incorporated his business, and he was the sole owner and proprietor. She stated that her husband decided what bills to pay and what bills not to pay. In 2005, he opened a showroom for his business, and Applicant was working about 60 to 80 hours a week but was not compensated. He handled the business accounts, which she did not have access to. They also had personal joint accounts.²

Applicant incurred student loans when she attended college. They total approximately \$40,023. She stated that she made occasional payments through the years, but they were not consistent and the loans have been delinquent for 17 years. She stated she would occasionally mention to her husband the need to repay the loans, but his response was they would pay them when they had the money. Applicant was aware she still owed them, but acquiesced to her husband to "keep from rocking the boat."³ She explained that she is aware that if she makes nine consecutive payments the loans will be removed from a delinquent status.⁴

In addition to the delinquent student loans, Applicant has three judgments that are owed. Two are to a hospital and the remaining one is to a surveyor. The judgments total \$5,706. The two medical debts were for treatment for her husband. These are joint debts and the amounts were for services not covered by insurance. The surveyor judgment is in Applicant's name only. The judgments are from 2005, 2007, and 2009.⁵

¹ Tr. 31-35.

² Tr. 20, 28, 44-48.

³ Tr. 28.

⁴ Tr. 24-25, 29, 48-49, 62-63.

⁵ Tr. 22-23, 49-50.

Applicant stated that, because she was not working and did not receive pay for the work she did for her husband's business, she did not have the money to pay these debts. She agreed to stay home with the children and not work outside the home. When she and her husband separated, she began to take control of her finances once she got a job. She paid some smaller debts listed in her credit bureau report. She sold some property that she inherited from her father, to pay some debts. She took money from her savings to pay other debts. Applicant's divorce and property settlement is pending. She stated she chose not to make payments on the debts in the SOR because she believes they will be off-set in the property settlement negotiations and the final divorce decree.⁶

Applicant and her husband own a piece of land that she pays \$500 a month on the mortgage. They are trying to sell it. Once it is sold, she anticipates being able to pay her delinquent debts.⁷

Applicant has custody of the children. She receives child support, but it is not court-ordered and she does not receive it consistently. She may receive \$300 one month, and \$900 another month. She cannot anticipate what the amount will be.⁸

Applicant has no other property. The family house was foreclosed in 2007. She and her daughters lived in a trailer for a period of time. They also lived in a leased house for a period of time. Applicant owes the landlord of the leased house about \$5,000 that she considers a personal loan. The landlord accepted her promise to repay the debt. She anticipated including this debt in the property settlement. She expects to be able to pay all of her delinquent debts except her student loans when the property settlement is completed.⁹

Applicant updated her personal financial statement, which now reflects that she spends more than she earns. She stated she used her savings to pay bills and has none left. She is waiting for the joint property to be sold so she can pay her remaining delinquent debts. Her ability to meet her expenses is often dependent on how much money her husband gives her for child support. She stated she has a budget, but has not received financial counseling. She attributes her financial problems to acquiescing to her husband's wishes that she stay home to care for their children.¹⁰

I have considered all of the documents Applicant provided. She provided letters and articles showing her volunteer efforts in her community.¹¹ She also provided

⁶ Tr. 21-24.

⁷ Tr. 27, 40-43.

⁸ Tr. 34-36.

⁹ Tr. 26-27, 38-40.

¹⁰ Tr. 54-61.

¹¹ AE B.

character letters describing her as a wonderful mother who is a strong honest woman. She is considered loyal, and trustworthy. The letters also reflected her attributes in customer service. She is described as being the consummate professional, who is smart and intelligent.¹² I have also considered Applicant's performance appraisal which reflected that she met or exceeded the expectations of her employer.¹³

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 list potentially disqualifying conditions and mitigating conditions, which are 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible

¹² AE C.

¹³ AE A.

extrapolation of 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 notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

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

Applicant has approximately \$47,729 in delinquent debts that are unpaid or unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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; and

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

Applicant has three judgments and two delinquent student loan debts. Her student loan debts have been delinquent for approximately 17 years. None of the judgments or student loan debts have been paid or resolved. I find that AG ¶ 20(a) is not established because Applicant's delinquent debts are still owed and she has not taken action to resolve them.

Applicant worked with her husband, but did not receive a salary. She attributed her financial problems to her husband wanting her to stay home and care for their children, and his decisions about which bills to pay. I cannot find that under the circumstances these conditions were beyond Applicant's control. She did not provide sufficient evidence to convince me that she was forced to ignore her debts. She did not provide evidence about what she has done to pay her debts since she separated from her husband, or that she has contacted the creditors and worked out payment plans. She has not paid any of the debts on the SOR. At this point, she does not want to address her debts because she believes it may jeopardize a property settlement. Although Applicant may have found herself in a difficult situation when addressing finances with her husband, she has not taken any action to address her debts. She admitted her student loans have been delinquent for 17 years. Even if these conditions were beyond her control, I cannot find she acted responsibly. I find AG ¶ 20(b) does not apply.

The judgments and debts alleged in the SOR remain unpaid and unresolved. Applicant's updated financial statement shows her expenses are greater than her income. She has not made good-faith payments to creditors or contacted her creditors to resolve her debts. She is waiting for her divorce and property settlement to be completed before addressing her delinquent accounts. At this juncture, I cannot find there are clear indications the problem is being resolved or under control. Applicant is hopeful that the sale of property and the property settlement will put her in a better financial situation. However, Applicant's quasi-plan on how she intends to resolve her debts is too speculative. I find AG ¶¶ 20(c) and 20(d) do not apply.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has done well at her job. She is considered a loyal and trustworthy friend. She stayed at home with her children and did not earn an income during the time she was with her husband. She owes \$46,729 for judgments and delinquent debts. They are unpaid and unresolved. At this time, she does not have a plan to resolve her debts, other than waiting for her divorce and property settlement to be completed. Her expenses exceed her income. Applicant failed to meet her burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.e: 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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge