



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



In the matter of:)
)
) ISCR Case No. 11-00443
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel

February 13, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations (e-QIP) on July 26, 2010. On June 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 after September 1, 2006.

The Applicant answered the SOR in writing on June 25, 2011, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on July 20, 2011. The Applicant acknowledged receipt of the FORM on August 8, 2011, but failed to respond. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated June 25, 2011, the Applicant admitted the factual allegations in Paragraphs 1.c. through 1.n., 1.p. through 1.r., 1.u., and 1.x. of the SOR, with some explanations. She denied the factual allegations in Paragraphs 1.a. and 1.b., 1.o., 1.s., 1.t., 1.v., 1.w., and 1.y. of the SOR.

Guideline F - Financial Considerations

1.c. through 1.n., 1.p. through 1.r., 1.u., and 1.x. The Applicant admits that she is indebted to 17 creditors for past due debts totaling about \$30,221. In her answer to the SOR, she gives no further explanation other than to aver, "I agree." I find that these debts are still outstanding.

1.a. It is alleged that the Applicant is indebted to Creditor A in the past due amount of about \$2,344. The Applicant simply avers, "[I] don't know what company they represent." As this debt does appear on the Government's March 2011 credit report (CR), I find that this debt is still outstanding. (GX 7 at page 1.)

1.b. It is alleged that the Applicant is indebted to Creditor B in the past due amount of about \$1,605. The Applicant again simply avers, "[I] don't know what company they represent." As this debt does appear on the Government's March 2011 credit report (CR), I find that this debt is also still outstanding. (GX 7 at page 1.)

1.o. It is alleged that the Applicant is indebted to Creditor O in the past due amount of about \$1,523. The Applicant avers, "My daughter's account." As this debt does not appear on the Government's March 2011 credit report (CR), I find that this debt is not outstanding.

1.s. and 1.t. It is alleged that the Applicant is indebted to Creditor S in a past due amount totaling about \$230. The Applicant simply avers, "[I] knew nothing and was never notified." As these debts do appear on the Government's March 2011 credit report (CR), I find that these debts are still outstanding. (GX 7 at page 2.)

1.v. It is alleged that the Applicant is indebted to Creditor V in the past due amount of about \$6,422. The Applicant avers, "[I] never had an . . . [Creditor V's] card." As this debt does not appear on the Government's March 2011 credit report (CR), I find that this debt is not outstanding.

1.w. It is alleged that the Applicant is indebted to Creditor W in the past due amount of about \$3,296. The Applicant avers, "[I] don't know what company they represent." As this debt does not appear on the Government's March 2011 credit report (CR), I find that this debt is not outstanding.

1.y. It is alleged that the Applicant is indebted to Creditor Y in the past due amount of about \$208. The Applicant simply denies this debt. As this debt does not appear on the Government's March 2011 credit report (CR), I find that this debt is not outstanding.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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.

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 relating to the guideline for Financial Considerations is set out in Paragraph 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. Under Subparagraph 19(a), an "*inability or unwillingness to satisfy debts*" is potentially disqualifying. Similarly under Subparagraph 19(c), "*a history of not meeting financial obligations*" may raise security concerns. The Applicant has significant past due debts.

I can find no countervailing Mitigating Condition that is applicable here. The Mitigating Condition found in Subparagraph 20(b) is applicable where "*the conditions that resulted in the financial problem were largely beyond the person's control, . . . and the individual acted responsibly under the circumstances.*" Here, in her "Financial & Interview Verification Interrogatory," the Applicant avers that her husband "passed away on Jun 06, and left subject with many financial obligations that have since been unmet and largely unpaid." (GX 5 at page 6.) However, she has failed to submit any evidence showing she has now addressed the very substantial debts alleged and admitted to in the SOR, which total in excess of \$30,000.

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. Under Paragraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. She has yet to demonstrate that she has addressed over \$30,000 in admitted past due debts. For this reason, I conclude Applicant has not mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.~1.n.	Against Applicant
Subparagraph 1.o.	For Applicant
Subparagraphs 1.p.~1.u.	Against Applicant
Subparagraphs 1.v. and 1.w.	For Applicant
Subparagraph 1.x.	Against Applicant
Subparagraph 1.y.	For 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.

Richard A. Cefola
Administrative Judge