



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case: 11-09034
)
Applicant for Security Clearance)

Appearances

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

01/23/2013

Decision

DAM, Shari, Administrative Judge:

Applicant submitted a security clearance application on October 20, 2010. (Item 5.) On August 10, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). (Item 1.) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 17, 2012, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government’s written case on November 26, 2012. A complete copy of the File of Relevant Material (FORM), containing 12 Items, was provided to Applicant, and she was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on November 30, 2012, and returned it to the Department of Defense Office of Hearings and Appeals (DOHA). She did not submit additional documents for the record. I received the case assignment on January 4, 2013.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. She earned an associate's degree in information technology in 1992. She was married to her first husband from 1997 to 2003. She married her second husband in 2004, but is now separated. She has two children, ages 8 and 13. Her second husband was convicted of aggravated battery of his girlfriend and the negligent use of a firearm. He has been incarcerated since August 2010. No divorce action is pending. (Items 5, 6.)

Applicant was employed from August 2000 to July 2007 with her current employer, a defense contractor. She was then unemployed until February 2008 at which time she found work with a private company. She worked until September 2009 when she again became unemployed. In August 2010 she obtained a position as a drafter with her current employer. (Item 5.)

In August 2010 Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). During a November 2010 interview with a government investigator regarding her delinquent debts, Applicant stated that her financial situation was improving since starting employment in August 2010. She intended to begin addressing her debts. (Item 6.)

Applicant has a history of financial difficulties. In November 1994 she filed a Chapter 7 Bankruptcy petition and discharged those delinquent debts in March 1995. The amount of the discharged debt is not included in this record. In March 2005 she filed another Chapter 7 Bankruptcy petition, and discharged about \$83,000 of delinquent debts in June 2005. It included medical bills, automobile loans, and credit card bills. That debt accumulated after she began working part time. (Item 6.)

Applicant attributed her current financial problems to an 11-month period of unemployment prior to her current position, and her role as a single parent supporting two children as a result of her second husband's arrest and conviction. Although she receives child support for one child, she does not have sufficient money to adequately support herself and family.

In her Answer Applicant admitted owing the 14 delinquent debts alleged in the SOR, totaling \$43,299. (Item 4.) According to credit reports included in the record, the debts accumulated between 2004 and 2012. (Items 10, 11, 12.) In February 2011 she wrote three of her creditors and offered settlements, but did not receive a response. She resolved two delinquent debts not alleged on the SOR. (Item 7.) All other debts remain

unpaid or unresolved. She did not present documentary evidence that she participated in credit or financial counseling or that she uses or has been using a budget to manage and monitor her finances.

Applicant earns an annual salary of \$36,712 and receives \$8,400 in child support for a total yearly income of \$45,112. Her net monthly income is \$2,959 and expenses are \$2,485. She pays about \$387 toward her student loan and an outstanding personal loan. She has about \$86 remaining at the end of the month.

Applicant stated in her Answer that her financial situation would not cause her to engage in illegal behavior. She has attempted to do the best she could with her finances. (Item 4.)

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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Pursuant to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 concerns relating to the guideline for financial considerations are 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 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

Appellant has a 20-year history of accumulating delinquent debts that she has been unable or unwilling to satisfy. Twice her inability to satisfy debts resulted in petitioning for bankruptcy, in 1994 and 2005. The evidence is sufficient to raise the application of the above two disqualifying conditions.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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; and

(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.

Applicant's debts, in excess of \$43,000, became delinquent between 2004 and 2012, and continue to be unpaid or unresolved to-date. Applicant failed to demonstrate that such problems are unlikely to continue or recur, or that her financial reliability and trustworthiness have improved. The evidence does not support the application of AG ¶ 20(a).

AG ¶ 20(b) has partial application. Applicant experienced an 11-month period of unemployment prior to obtaining her position in August 2010, the same month that her husband went to prison. Those circumstances contributed to her financial delinquencies and were beyond her control. However, evidence that she attempted to responsibly manage the debts while they were accumulating is necessary for the full application of this mitigating condition. She did not present any evidence supporting that prong of this condition. AG ¶ 20(c) does not apply either. Applicant did not present sufficient evidence that she participated in financial or credit counseling, and offered no documentation to establish clear indications that her problems are being resolved or under control. She provided some proof that in February 2011 she proposed resolving three delinquent debts, but failed to obtain cooperation from those creditors. Mitigation under AG ¶ 20(d) is minimal. She admitted each SOR-listed debt, so AG ¶ 20(e) does 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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant is an adult, who is responsible for her choices and conduct that underlie the security concerns expressed in the SOR. Her financial problems span the past twenty years, and continue to the present. She has filed two bankruptcies to dispose of delinquent debt, the last one in 2005 when the court discharged about \$83,000. To date, she has about \$43,300 of delinquent debts and neither the means nor a plan to address them. She offered insufficient evidence of rehabilitation or of responsible actions to mitigate her financial issues. Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance.

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

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