



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 11-11334
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Per se*

May 23, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on February 18, 2011. On May 9, 2013, the Department of Defense (DOD) 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.

Applicant answered the SOR (Answer) in writing on June 26, 2013, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on October 24, 2013. Applicant responded to the FORM (Response) on April 24, 2014, enclosing her most recent employee appraisal. Department Counsel had no objection, and the document is entered into evidence. The case was assigned to me on May 15, 2014. 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, Applicant admitted the factual allegations in all the Paragraphs of the SOR.

Applicant is a 48 year-old employee of a defense contractor. (Item 1 at pages 5 and 8.) She attributes her below mentioned past-due indebtedness to “joint debt obtained through 21 years of marriage.” (Answer at page 3.) She was divorced in 2008. (Response at page 1.) In November of 2012, she had a negative monthly cash flow of about \$300. (Item 4 at page 5.)

1.a.-1.l. Applicant admits to 12 past-due debts to six different creditors totaling about \$34,749. (See *also* Items 5 and 6.) In her June 2013 Answer, Applicant averred “I am currently in the process of claiming bankruptcy.” However, in her April 2014 Response, she makes no mention of the bankruptcy, and has offered nothing further in this regard. I find that her 12 debts are still outstanding.

1.m. In April of 2010, Applicant was charged with Retail Theft, to which she pled guilty and was fined. (Item 11.) In her Response, Applicant declares her innocence, and avers “I am in the process of filling out paperwork to get this expunged from my record.” As Applicant pled guilty to the theft; and has offered no further documentation in this regard, I find against her as to this allegation.

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. (AG Paragraph 2.) The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 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.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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. Applicant has significant past-due debts, which she has not yet resolved.

Subparagraph 19(d) is also applicable as her Retail Theft constitutes a “*deceptive or illegal financial*” practice.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant can attribute her past-due debts to her 2008 divorce, she has failed to act “*responsibly under the circumstances*,” as required by Subparagraph 20(b). Furthermore, Subparagraph 20(c) requires that “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.” Applicant has yet, in good

faith, to address debts totaling in excess of \$34,000. Accordingly, Applicant has not met her burden of persuasion.

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 AG 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. Applicant has submitted a favorable employee appraisal, but the record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. Applicant has over \$34,000 in past-due indebtedness that she has yet to resolve. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a. | Against Applicant |
| Subparagraph 1.b. | Against Applicant |
| Subparagraph 1.c. | Against Applicant |
| Subparagraph 1.d. | Against Applicant |
| Subparagraph 1.e. | Against Applicant |

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|-------------------|-------------------|
| Subparagraph 1.f. | Against Applicant |
| Subparagraph 1.g. | Against Applicant |
| Subparagraph 1.h. | Against Applicant |
| Subparagraph 1.i. | Against Applicant |
| Subparagraph 1.j. | Against Applicant |
| Subparagraph 1.k. | Against Applicant |
| Subparagraph 1l. | Against Applicant |
| Subparagraph 1.m. | 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.

Richard A. Cefola
Administrative Judge