



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-00914
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel

March 26, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on August 22, 2011. On August 16, 2012, 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.

The Applicant acknowledged receipt of the SOR on September 5, 2012. She answered the SOR in writing that same date, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on December 13, 2012. The Applicant responded to the FORM on February 3, 2013. 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 September 5, 2012, the Applicant admitted the factual allegations in all the Paragraphs of the SOR, without explanations.

Guideline F - Financial Considerations

1.a.-1.c. The Applicant filed for the protection of a Chapter 7 bankruptcy in January of 1998. (Item 8.) Her debts were discharged in February of 2000. (*Id.*) The Applicant defaulted on a \$316,000 mortgage in 2008. (Item 11 at page 9.) She again filed for the protection of a Chapter 7 bankruptcy in September of 2010. (Item 7.) No real property owned was listed on Schedule A of this bankruptcy petition; and as such, I find that the Applicant's defaulted mortgage was handled by way of foreclosure. (Item 7 at page 17.) Her debts were discharged in December of 2010. (Item 7.)

On an undated "Personal Financial Statement," the Applicant avers that she has a positive monthly cash flow of about \$1,310 each month, but in the "REMARKS" section, she also avers the following: "Car payment is paid ½ by daughter. Collect unemployment: \$1,200 because I'm on call when . . . the week that they don't call me I collect unemployment." (Item 6.) She owes about "8000 [sic]" on her car. (*Id.*)

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 AG ¶ 2(a) describing 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 clearance 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 adverse 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 had significant past-due debts, which she resolved by way of two bankruptcies, and the foreclosure of a \$316,000 mortgage debt.

I can find no countervailing Mitigating Condition that is applicable here. She is living, in part, on unemployment, and her daughter pays half of her car payments. The obvious questions must be asked, what happens if her daughter stops those car payments, what happens if the unemployment benefits are not enough to make up for those car payments, and what happens if her unemployment benefits run out. These are all obvious questions the Applicant, who has the burden to do so, has not answered.

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. The Applicant, who has twice filed for the protection of bankruptcy, is, in part, living on unemployment benefits and the generosity of her daughter. For these reasons, 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.c.	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 the Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge