



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-02835
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

February 6, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on May 1, 2006. On July 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

On July 10, 2007, DOHA sent a five-step instruction attachment (Item 2) with the SOR, explaining that Applicant write an answer to each subparagraph and paragraph of the SOR. In her answer dated July 28, 2007, she complied with the instructions, except she did not write an answer to subparagraph 2.a. of the SOR. Because she did not answer subparagraph 2.a., she was instructed by mail on August 9, 2007, (Item 4) to answer each paragraph and subparagraph of the SOR, specifically subparagraph 2.a.

She furnished a second answer on August 26, 2007, and complied with the instructions, except she again did not write an answer to subparagraph 2.a. A copy of the government's File of Relevant Material (FORM, the government's evidence in support of the SOR) was sent to Applicant on October 19, 2007. Applicant received the FORM on October 30, 2007. Her response was due on November 29, 2007. No response was received. The case was assigned to me on January 28, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

There are eleven allegations under the financial considerations guideline. Applicant supplied two answers. In her first answer, she denied subparagraph 1.b. only. In her second answer, she denied subparagraphs 1.b. and 1.d. Also, neither answer provides a reply to the personal conduct allegation under paragraph 2.

In a supplemental statement of her first answer to the SOR, Applicant, to her answer, indicated she was willing to resolve her debt "if there is someone that can help me to consolidate my debt and set up a payment plan." She stated she was willing to do whatever was required to repay the debts. However, she wanted to have the debt identified in subparagraph 1.h. treated as a joint debt.

Applicant is 44 years old and employed by a defense contractor. She is currently separated. She seeks a security clearance.

Financial Considerations

On March 12, 2007, DOHA sent Applicant a series of questions (GE 7, interrogatories) related to her delinquent debts. The purpose of the questions was to learn of any action taken by Applicant to address the debts. Applicant provided responses on April 24, 2007. The first question directed Applicant to provide the current status of 12 of the 14 debts listed in the SOR. Underneath the creditor list is an explanation of appropriate documentation, including (1) a statement from the creditor setting forth the status of the debt, (2) statement from loan consolidation or debt management firm indicating accounts in plan and status, and (3) front or back copies of check instruments confirming debt and date paid. Applicant wrote responses next to each one of the creditors/collection entries. In her responses, she indicated she could not reach some creditors while claiming she had established a payment plan with others. Next to the creditors identified in subparagraphs 1.d. and 1.i. of the SOR, she wrote that she paid them and included numbers¹ next to her written responses. No substantiating documentation verifying the debts were actually paid, was furnished however.

¹ These numbers could be the numerical number of the check she purportedly used to pay the debt. No additional information was provided to indicate what the numbers mean.

The second question of GE 7 directed Applicant to obtain and submit a credit report addressing any adverse information. Applicant submitted a credit report dated April 24, 2007. The report discloses most of the delinquent accounts listed in the SOR.

Applicant also complied with question 3 of GE 7 by filling out a personal financial statement (PFS), a one-page form indicating in chronological order, monthly income, monthly expenses, debts, monthly remainder, and assets. Applicant reported her monthly net income was \$2,663.74, her monthly expenses were \$950.00, and her monthly debt payments of \$200.00. Applicant did not write in her net remainder. To determine her net monthly remainder, I subtracted her monthly expenses (\$950.00) and her monthly debt payments (\$200.00) from her monthly income (\$2,663.74). Her net monthly remainder of \$1,513.74.

The SOR lists eleven debts, mostly credit cards, two medical accounts, and a large secured personal loan. The total overdue amount is \$39,734.00. One of the debts became delinquent in 2002. Two accounts turned into delinquent debts in 2003. The remaining past due debts were converted to a collection or charge off status in 2005, 2006, and 2007. Even after she received the FORM in October 2007, in which she was informed she could provide evidence about the debts, she chose to provide no documentation to support her earlier claims of satisfying two of the listed creditors. Applicant provided no character evidence from coworkers, family or friends, or evidence about her job performance.

Personal Conduct

On May 1, 2006, Applicant filled out an SCA. Section 28.a. required Applicant to answer YES or NO to the question, "in the last 7 years, have you been over 180 days delinquent on any debt(s)? Section 28.b. required Applicant to answer YES or NO to the question, "are you currently over 90 days delinquent on any debt(s)? Applicant answered "NO" to both questions. Then, she certified with her signature at the end of the SCA that these negative answers, along with her other entries on the form, were true to the best of his knowledge. Applicant's answer to the SOR that she submitted on July 28, 2007, was incomplete because she had not provided an answer to subparagraph 2.a. She was instructed by DOHA to supply an answer to subparagraph 2.a. In her second answer dated August 26, 2007, she answered all allegations except for subparagraph 2.a. I find subparagraph 2.a. was not answered deliberately because Applicant knew she deliberately omitted relevant information about her finances from Section 28a. and 28b. of her May 2006 SCA.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 ultimate adjudicative goal is a fair, impartial and common sense decision. According to AG, the entire process is a careful thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility. 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.

Financial Considerations (FC)

Inability to pay bills on time places the individual debtor at risk of committing illegal acts to generate funds.

Personal Conduct (PC)

Supplying false information on a form or during an interview represents dishonest conduct within the purview of the PC guideline.

Analysis

Applicant has more than \$39,700.00 in delinquent debt. There are two medical debts, and the rest are credit cards or loan accounts. Some debts have been delinquent for more than three years, while other debts changed over to a delinquency status in 2007. Based on the large amount of accrued debt, and a record of not resolving her debts, FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*), and FC DC 19.c. (*a history of not meeting financial obligations*) apply. The fact that Applicant deliberately tried to conceal the debt in May 2006 when she executed her SCA suggests she has not been willing to pay the debt. Her representations in April 2007 (GE 7) of having attempted to contact some creditors or having established a payment plan with others indicates she is still willing to disguise her inaction with continued fabrications. Applicant's PFS that she filled out in April 2007 reflects a substantial amount of discretionary income left over every month that Applicant could have used to pay four of the smaller accounts in one payment or in a small number of payments. Applicant's decision to do nothing communicates through inaction an even stronger inference of her unwillingness to address her indebtedness in a responsible manner.

FC mitigating condition (MC) 20.a. (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that is unlikely to recur and does not cast doubt on the individual's currently reliability, trustworthiness or good judgment*) may apply to excuse financial problems that are substantially dated and occurred under peculiar circumstances that are unlikely to recur. Though Applicant provided no explanation for her financial dilemma, the recency of some of the delinquent debts, as well as the cumulative amount of debt, foreclose the applicability of FC MC 20.a.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances*) does not apply. There is no record of any kind of unanticipated event that stopped or hindered Applicant from paying her bills. The fact that Applicant continued to collect new, delinquent debt without handling her old overdue debt, shows she acted irresponsibly between 2002 and 2007.

FC MC 20.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*) cannot be favorably considered as there is no record of counseling or evidence to demonstrate the financial problems are under control. In view of the sizeable, monthly remainder that has been available for Applicant to pay off several of the smaller debts in the SOR, FC MC 20.d. (*the individual initiated a good-faith effort to repay creditors or otherwise resolve debts*) does not apply either. Subparagraphs 1.a. through 1.k. are found against Applicant.

Personal Conduct (PC)

The concern of this guideline is questionable judgment, a lack of candor, or dishonesty during the security investigation. When a person declines to be forthright and candid during all phases of an investigation, she clearly exhibits disqualifying behavior. However, occasionally the omission is not deliberate or intentional. The omission can occur through negligence where forgetfulness causes a person to omit information from a security form. Alternatively, the omission can result from not understanding the question. Another instance in which an unintentional omission can occur is where there is a defect in the computer software that prevents an applicant from inputting the proper information. While I could find that one of these explanations applies to Applicant's omission of her financial history from Section 28a. and 28b. of her SCA, there is an inadequate foundation to support any of the proposed explanations. Applicant's failure to provide a written answer to subparagraph 2.a. can be attributed to negligence or oversight, even though she completed the SCA less than a year earlier. However, her failure to answer the same question a second time, especially after receiving instructions that indicated she specifically answer subparagraph 2.a., establishes ample grounds for me to conclude she deliberately did not answer the subparagraph because it is true.² PC disqualifying condition (DC) 16.a. (*deliberate omission, falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility*) applies.

The only mitigating conditions (MC) available are PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) PC MC 17.c. (*the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*), and 17.e. (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*).³ Applicant's continuing denial she omitted relevant information from her SCA in May 2006 precludes the application of PC MC 17.a. Deliberately concealing 11 delinquent debts from her SCA in May 2006 cannot be characterized as minor or infrequent. In addition, the intentional falsification continues to cast doubt on Applicant's reliability, trustworthiness and judgment. PC MC 17.c. is inapplicable. The other mitigating conditions under the PC guideline are not applicable.

² Although Applicant may not have known that all identified debts under subparagraph 2 were delinquent within the scope of both questions of Section 28 of her SCA, she still was required to answer the questions truthfully and to the best of her knowledge.

³ The other PC mitigating conditions do not apply.

PC MC 17.d. is not applicable to these circumstances as Applicant has not acknowledged she deliberately omitted her dishonest conduct. PC MC 17.e. cannot be applied for mitigation until Applicant fully comprehends the folly of her deliberate falsification in May 2006.

Assuming that Applicant's omission of his financial history from his SCA in May 2006 is found to be unintentional, then I would conclude that Applicant exercised bad judgment in not explaining her omission of relevant financial information from Section 28a. and 28b. Her questionable judgment warrants a finding against Applicant under the PC guideline.

Applicant's various explanations on April 24, 2007 (GE 7), of the status of the listed debts convince me she was sufficiently aware of her old and recent delinquent debts. After placing numbers, i.e., check numbers, next to her claims that she paid two of the creditors, Applicant could have easily provided documentation, e.g., a ledger or bank statement, showing these debts were satisfied. Instead, the lack of documentation undermines her credibility even further.

Whole Person Concept

As explained on page 18 of Enclosure 2 of Directive 5220.6, the decision whether to grant or deny a security clearance depends on a common sense assessment of the FC and PC guidelines evaluated in the context of the whole person. I have carefully evaluated both guidelines in the context of the general factors of the whole person. Applicant was 43 years old when she completed her SCA in May 2006. Less than a year later, she submitted information about each one of the listed debts in her answers to interrogatories. Though she did not recognize a few creditors, she seemed to be fully aware of her liability to others. Regarding two accounts, Applicant claimed she had paid the accounts and even entered numbers next to the handwritten information. Her PFS displays a net remainder that would have allowed her to pay some of the past due debt. Instead, the record shows only a statement of her intention to enroll in a debt consolidation plan. Applicant's current financial problems and her deliberate effort to conceal them has not been mitigated.

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 (Financial Considerations, 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

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

Paragraph 2 (Personal Conduct, Guideline E):	AGAINST APPLICANT
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Subparagraph 2.a.	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge