



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 12-04508 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Carolyn E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), Applicant's response, and the exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Her request for a security clearance is denied.

Statement of the Case

On February 21, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline F (financial considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In her March 11, 2014 Answer to the SOR, Applicant denied¹ the six allegations under the financial considerations guideline. She also requested a decision based on

¹ Applicant's answer was equivocal as to whether she admitted or denied the allegations. Although she stated, "To the best of my knowledge, 'I admit' to the following answers to your questions," her further

the written record in lieu of a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a FORM dated April 16, 2014. It contained the Government's argument and documents (Items 1-9) to support the preliminary decision to deny Applicant's request for a security clearance. Applicant received the FORM on April 24, 2014, and was allowed 30 days to file objections and submit material to refute or mitigate the security concerns. She timely submitted a response and one two-page document. (Items 10, 11) Department Counsel did not object to Applicant's submission. (Item 12) The case was assigned to me on June 2, 2014.

Findings of Fact

After a thorough review of the pleadings and the evidence, I make the following findings of fact.

Applicant is 47 years old and holds an associate's degree, completed in 2006. She has lived with a cohabitant since 1993, and did not list children in her 2011 security clearance application. She has been employed full-time by the same defense contractor since 1988, and received a top secret security clearance at that time. As of 2011, her position was senior administrative assistant. (Items 5, 6)

In her 2011 security clearance application, Applicant disclosed nine delinquent credit card accounts totaling approximately \$22,400. During her February 2012 security interview, Applicant explained that her finances were in good order before 2006, but at the time, she was paying only the minimum monthly payment on her multiple credit card accounts. She did not provide information about the circumstances that led to having multiple credit card accounts. She noted in her interrogatory response that "Everyone makes mistakes and hardships do happen." However, she did not elaborate on the hardships that may have led to her delinquencies. (Items 4, 5, 6)

Applicant decided that paying the minimum monthly amount did not sufficiently reduce her credit card balances, and retained a law firm that provided a credit card debt-resolution program. Applicant provided evidence from the company confirming that she retained it in September 2006, and that it required that her debts be at least six months delinquent before it would negotiate with creditors. She signed a four-year contract to pay \$420 monthly. She stated in her response to the FORM that, "Before I joined this program, all my credit cards were getting paid on time." (Items 5, 6, 10, 11)

Applicant provided evidence that the law firm settled ten accounts on her behalf between 2007 and 2010. She settled three other accounts in 2007, without the assistance of the law firm. She completed the debt-resolution program in October

statements indicate that her debts have been paid or resolved through a debt-resolution program, her credit report is "clean," and her "finances are in very good order." Department Counsel interpreted her response as a denial of all six allegations. (FORM; Item 4)

2010. The record contains no evidence of financial counseling. At her 2012 security interview, Applicant stated she did not plan to open new credit card accounts, but to pay with cash in the future. (Items 6, 11)

Applicant noted in her 2013 interrogatory response that her “[F]inancial situation has greatly improved,” and “[A] lot of my credit cards will drop from my credit report in 2013. I have worked hard to correct my financial situation. I am not late on anything now.” She stated in her Answer that her finances are in order, and she is “no longer financially overextended.” (Items 4, 6)

Applicant's credit reports show the following.

- The January 2012 credit report shows 21 positive accounts with “pays as agreed” status. A total of 15 other accounts were late, charged off by the creditor, or in collection status, including the debts at SOR allegations 1.a, 1.b, 1.c., 1.e, and 1.f. Of the 15 negative accounts, 8 had been resolved through settlement for less than the full balance. (Items 4, 6, 9)
- The July 2013 credit report lists 14 accounts in current status, as well as five of the previously settled accounts. Six delinquent, collection, or charged off accounts appear, including the SOR debts at allegations 1.a, 1.b, 1.c, and 1.d. (Item 8)
- The January 2014 credit report shows five accounts that have been “closed or paid with a zero balance.” It shows one delinquent account (allegation 1.a). Three of the settled accounts still appear on the credit report. (Item 7)

Applicant submitted a September 2013 personal financial statement (PFS) showing monthly net pay of \$2,636. Her monthly expenses total \$2,318. She also pays \$35 to \$45 monthly on five accounts, totaling \$195 per month in debt payments. None of the SOR debts are included in her monthly debt-payment list. Applicant has approximately \$123 net remainder each month, and savings of \$4,000. (Item 6)

The following six SOR debts total \$36,688.

1.a – Credit card: \$2,056. Applicant explained in her security interview that she used this credit card to pay for veterinary expenses. She opened it in 2008. It became delinquent in 2009, and was sold to a collection agency. Applicant stated in her Answer that she has had a payment plan for the account since June 2013 and is making payments.² Her January 2014 credit report shows that the debt is being paid under a “partial payment agreement.” (Items 4, 7, 9)

² Attached to her interrogatory response, Applicant provided a copy of a \$50 cancelled check, dated August 17, 2013. However, it is unclear if the check relates to the debt at allegation 1.a, as the payee's name does not appear in the SOR. Applicant did not provide an explanation of the check. (Item 6)

1.b – Credit card: \$10,225. Applicant has had more than one account with this creditor (Creditor A).³ The Creditor A account alleged in the SOR was opened in 2001 and became delinquent in 2006. Applicant stated the debt was in her debt-resolution program, and that it had been dropped from her credit report as of August 2013.⁴ An account with Creditor A was settled by the law firm in July 2008. However, the account that was settled is not the one alleged in the SOR, as they have different account numbers. (Items 4, 8, 9)

1.c – Credit card: \$3,641. This account was opened in 2005 and became delinquent in 2006. In her 2013 interrogatory response, Applicant said she did not recognize it. In her Answer, she said it was included in her debt-resolution program. However, an account with this creditor does not appear in the list of settled accounts provided by the law firm. Applicant stated that the debt has not appeared on her credit report since August 2013. It does not appear on her January 2014 credit report. (Items 4, 7, 8, 9, 11)

1.d – Medical debt: \$44. This medical debt became delinquent in 2012. In her 2013 interrogatory response, Applicant said she did not recognize it. However, in her Answer to the SOR, she stated she has paid it. She did not provide paperwork supporting her claim. Her July 2013 credit report shows it is in collection status. (Items 4, 8)

1.e – Credit card: \$8,407. Applicant has had more than one account with this creditor (Creditor B). She opened this account in April 2009, and it became delinquent in 2011. She stated in her Answer to the SOR that the debt was included in her debt-resolution program. The law firm did settle an account with Creditor B in October 2008. However, that account had a different account number than the one with Creditor B that is cited in the SOR. During her security interview, Applicant stated she is an authorized user on this account, and her cohabitant is the account owner. However, her 2012 credit report shows it is not a joint account.⁵ (Items 4, 9)

1.f – Credit card: \$12,315. This debt became delinquent in 2006. Applicant stated in her interrogatory response that she was an authorized user on the account with her cohabitant, and that, “I’m not sure where this card stands as we get no calls anymore since we have met statue [sic] of limitations in [state].” Applicant’s 2012 credit report confirms that it is a joint account. In her Answer to the SOR, Applicant stated this

³ The law firm settled an account with Creditor A in July 2008. However, the account number of the settled account does not match the account numbers of either of the two delinquent accounts with Creditor A that appear in the SOR (allegations 1.b and 1.f).

⁴ Applicant states that several accounts have been dropped from her credit report based on her state’s statute of limitations. (Items 4, 6)

⁵ Applicant may have confused this account with the account cited in allegation 1.f, on which she is an authorized user. (Item 9)

debt was in her debt-resolution program. However, the Creditor A account settled by the law firm has a different account number than the account at allegation 1.f. The debt does not appear in her 2013 or 2014 credit reports. (Items 4, 7, 8, 9 at p. 11)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and policy in the AG.⁶ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government must produce admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access to classified information enters a fiduciary relationship with the Government based on trust. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁹

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern pertaining to financial considerations:

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; AG ¶ 2(b).

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

The evidence shows that Applicant has several credit card accounts and one medical debt that became delinquent between 2006 and 2012. The debts total \$36,688. Her delinquencies support application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). The record contains no indication that Applicant's debts stem from gambling, or alcohol or drug abuse.

Under AG ¶ 20, I considered the following conditions that can potentially mitigate security concerns:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant's debts started becoming delinquent in 2006, they are not in the distant past because they remain unpaid. Her unresolved financial situation casts doubt on her judgment, and AG ¶ 20(a) cannot be applied. AG ¶ 20(b) relates to financial problems that stem from conditions that an applicant could not foresee or control, and which have a negative effect on her finances. The mitigating condition is not relevant, because Applicant did not provide information showing that the circumstances that led to her delinquencies were beyond her control.

Mitigating conditions at AG ¶¶ 20(c) and (d) relate to bringing finances under control through good-faith efforts to resolve debts. Applicant's credit report shows that

she has a payment plan in place on the debt at allegation 1.a, and I find for the Applicant as to that allegation. She stated in her Answer that she paid the medical debt at allegation 1.d. However, she submitted no documentation to support her claim. I find against the Applicant on that allegation. The Appeal Board has held that “it is reasonable for a Judge to expect Applicants to present documentation about the satisfaction of specific debts.”¹⁰

Applicant contends that the remaining debts were paid through her debt-resolution program. However, the evidence shows that the debts in the SOR are not the same as the debts that were paid between 2008 and 2010 through her program. Applicant also appears to believe that debts that are no longer reported on her credit report, based on operation of her state’s statute of limitations, are resolved. However, the Appeal Board has held,

[S]ecurity clearance decisions are not controlled or limited by any statute of limitation, and reliance on the noncollectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. The federal government is entitled to consider the facts and circumstances surrounding an applicant’s conduct in incurring and failing to satisfy the debt in a timely manner. Applicant’s decision not to pay [her] debts reflects poorly on [her] judgment, reliability, trustworthiness, and ability to protect classified information. Applicant’s decision also shows an unwillingness to take responsibility for [her] actions.¹¹

Applicant took positive steps to deal with her debts four to eight years ago by settling three debts on her own and resolving ten debts through her debt-resolution program. Applicant receives partial mitigation under AG ¶ 20(d). However, her 2012 credit report shows that, after her debt-resolution program was complete, several debts remained or became delinquent. There is no evidence she has taken steps to resolve the delinquent debts listed in the SOR at allegations 1.b through 1.f. Her finances are not under control, and AG ¶¶ 20(c) does not apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the totality of an applicant’s conduct and all the circumstances. An 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

¹⁰ ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010, quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

¹¹ ISCR Case No. 11-08274 at 2 (App. Bd. May 2, 2013).

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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's history includes positive elements, including her long history of supporting a federal defense contractor. She resolved three debts through her own efforts in 2007. Moreover, she receives credit for initiating a program in 2006 to resolve her debts, and following through on that plan. Her efforts resulted in resolution of ten delinquent debts between 2007 and 2010.

However, since 2010, she has not been as vigilant about her remaining debts. Excluding the one debt she is paying, her current delinquent debt load is more than \$34,000. Given her long history of holding security clearances, she has been aware that delinquent debts are a security concern. However, she has not taken steps to deal with these debts. A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised about her suitability for a security clearance. For these reasons, I conclude she has not mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

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| Paragraph 1, Guideline F | AGAINST APPLICANT |
| Subparagraph 1.a | For Applicant |
| Subparagraphs 1.b – 1.f | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge