



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



In the matter of:)
)
) ISCR Case No. 12-07286
)
Applicant for Security Clearance)

Appearances

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

11/15/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 14, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 on September 1, 2006.

Applicant answered the SOR on September 8, 2014, and requested a hearing before an administrative judge. The case was originally assigned to a different judge on May 22, 2015. It was reassigned to me on June 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 12, 2015, and the hearing was convened as scheduled on July 14, 2015. The Government offered exhibits

(GE) 1 through 6, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, but did not offer any exhibits. DOHA received the hearing transcript (Tr.) on July 22, 2015.

Findings of Fact

Applicant admitted all the SOR allegations. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 29-year-old employee of a defense contractor. She has worked for this employer since 2011. She has a high school diploma and has taken some college courses. She has no military service, but she has held a security clearance since 2007. She is single and has no children.¹

The SOR alleges 14 delinquent debts totaling approximately \$20,615. The debts were listed in credit reports from March 2012, February 2014, June 2014, and March 2015.²

Applicant admitted during her security clearance interview and during her hearing testimony that her delinquent debts were caused by her own mismanagement. Most of the debts arose from her abuse of credit cards. She contacted a credit management company in about 2011 about consolidating her debts and making a single payment. She stated she made a few payments, but became too overwhelmed and stopped making further payments. She did not present documentation regarding what payments were made. She has not sought any other credit counseling since then.³

She contacted three attorneys about the possibility of filing bankruptcy. The first attorney took her retainer and went out of business. The second and third attorneys told her that she would only qualify for a Chapter 13 (wage earner plan) and not a Chapter 7 bankruptcy because of her income. She was not prepared to commit to five years of payments under a Chapter 13 plan and did not pursue bankruptcy any further. She stopped contact with her creditors when she contacted the attorneys and she has not resumed contact with them. All the SOR debts remain unresolved and she has no plan to address them.⁴

Applicant stated that she has about \$960 of discretionary income at the end of the month after paying all current expenses. She uses this money to help relatives who are unemployed. She is current on her car payment. She lives with her parents and

¹ Tr. at 5, 19, 24; GE 1.

² GE 3-6.

³ Tr. at 19-23; GE 2.

⁴ Tr. at 20, 30, 32, 34; GE 2.

pays monthly rent of \$200. Her checking account has a typical balance of about \$300. She has no savings or retirement accounts.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

⁵ Tr. at 25-29.

applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. She has not addressed any of the debts and they all remain unpaid. AG ¶ 20(a) is not applicable.

Applicant admitted that her debts were caused by her own financial mismanagement. This is not a condition beyond her control. AG ¶ 20(b) is not applicable. Applicant sought financial counseling and advice from attorneys about filing bankruptcy, but in the end decided to do nothing toward resolving her debts. Given the unpaid status of the SOR debts, there are not clear indications that Applicant's financial problems are under control. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) partially applies, but ¶ 20(d) does not apply. Applicant did not dispute any of the debts. 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant became indebted. However, I also considered that she has done nothing to resolve her financial situation. She has not established a meaningful track record of financial responsibility.

